

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ERICA DUBOIS) Case No. 1:16-CV-00267-DBH
)
Plaintiff)
v.)
)
CITY OF BANGOR, MAINE,)
et al,)
)
Defendants)

**DEFENDANTS CITY OF BANGOR, MAINE, BANGOR MAINE POLICE
DEPARTMENT AND OFFICER KEITH LARBY'S ANSWER AND
AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT**

NOW COME Defendants City of Bangor, Maine, Bangor Maine Police Department, and Officer Keith Larby (hereinafter collectively referred to as "the Bangor Defendants"), by and through counsel, Richardson, Whitman, Large & Badger, and answer Plaintiff's Complaint as follows:

JURISDICTION AND VENUE

1. The Bangor Defendants admit the allegations contained in Paragraph 1 of the Plaintiff's Complaint.
2. The Bangor Defendants admit the allegations contained in Paragraph 2 of the Plaintiff's Complaint.

PARTIES

3. The Bangor Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 3 of the Plaintiff's Complaint and therefore deny the same.

4. The Bangor Defendants admit the City of Bangor is responsible for the policies, procedures, practices and customs created, promulgated, implemented and enforced at the Bangor, Maine Police Department, through its various agencies, agents, departments, representatives, officials and/or employees. The Bangor Defendants deny all further allegations contained in Paragraph 4 of the Plaintiff's Complaint.
5. The Bangor Defendants admit the Bangor, Maine Police Department is responsible for the policies, procedures, practices and customs created, promulgated, implemented and enforced at the Bangor, Maine Police Department, through its various agencies, agents, departments, representatives, officials and/or employees. The Bangor Defendants deny all further allegations contained in Paragraph 5 of the Plaintiff's Complaint.
6. The Bangor Defendants admit the allegations contained in Paragraph 6 of the Plaintiff's Complaint.

FACTUAL BACKGROUND

7. The Bangor Defendants repeat and reallege their responses to Paragraphs 1 through 6 above as if fully set forth herein.
8. The Bangor Defendants admit the allegations contained in Paragraph 8 of the Plaintiff's Complaint.
9. The Bangor Defendants deny the allegations contained in Paragraph 9 of the Plaintiff's Complaint.
10. The Bangor Defendants deny the allegations contained in Paragraph 10 of the Plaintiff's Complaint.

11. The Bangor Defendants deny the allegations contained in Paragraph 11 of the Plaintiff's Complaint.
12. The Bangor Defendants deny the allegations contained in Paragraph 12 of the Plaintiff's Amended Complaint.
13. The Bangor Defendants deny the allegations contained in Paragraph 13 of Plaintiff's Complaint.
14. The Bangor Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 14 of the Plaintiff's Complaint and therefore deny the same.
15. The Bangor Defendants deny the allegations contained in Paragraph 15 of the Plaintiff's Complaint.
16. The Bangor Defendants admit the allegations contained in Paragraph 16 of the Plaintiff's Complaint.
17. The Bangor Defendants deny the allegations contained in Paragraph 17 of the Plaintiff's Complaint.
18. The Bangor Defendants deny the allegations contained in Paragraph 18 of the Plaintiff's Complaint.

**COUNT I – VIOLATION OF PLAINTIFF DUBOIS' CIVIL RIGHTS
(VIOLATION OF 42 U.S.C. SECTION 1983)**

19. The Bangor Defendants repeat and reallege their responses to Paragraphs 1 through 18 above as if fully set forth herein.

20. The Bangor Defendants deny the allegations contained in Paragraph 20 of the Plaintiff's Complaint.

WHEREFORE, the Bangor Defendants pray for a dismissal of Plaintiff's Complaint and for their costs and attorneys' fees and such other and further relief as the Court deems just and appropriate.

**COUNT II
NEGLIGENCE**

21. The Bangor Defendants repeat and reallege their responses to Paragraphs 1 through 20 above as if fully set forth herein.
22. Paragraph 22 calls for a legal conclusion and thus no response is required. To the extent a response is required, the Bangor Defendants deny the allegations contained in Paragraph 22 of the Plaintiff's Complaint.
23. The Bangor Defendants deny the allegations contained in Paragraph 23 of the Plaintiff's Complaint.

WHEREFORE, the Bangor Defendants pray for a dismissal of Plaintiff's Complaint and for their costs and attorneys' fees and such other and further relief as the Court deems just and appropriate.

**COUNT III
FAILURE TO TRAIN AND SUPERVISE PERSONNEL
VIOLATION OF CIVIL RIGHTS**

24. The Bangor Defendants repeat and reallege their responses to Paragraphs 1 through 23 above as if fully set forth herein.

25. The Bangor Defendants deny the allegations contained in Paragraph 25 of the Plaintiff's Complaint.
26. The Bangor Defendants deny the allegations contained in Paragraph 26 of the Plaintiff's Complaint.

WHEREFORE, the Bangor Defendants pray for a dismissal of Plaintiff's Complaint and for their costs and attorneys' fees and such other and further relief as the Court deems just and appropriate.

COUNT IV
RESPONDEAT SUPERIOR AND VICARIOUS LIABILITY

27. The Bangor Defendants repeat and realleges their responses to Paragraphs 1 through 26 above as if fully set forth herein.
28. The Bangor Defendants admit that Defendant Larby was acting within the course and scope of his employment. The Bangor Defendants deny the remaining allegations contained in Paragraph 28 of the Plaintiff's Complaint.
29. Paragraph 29 calls for a legal conclusion and thus no response is required. To the extent a response is required, the Bangor Defendants deny the allegations contained in Paragraph 29 of the Plaintiff's Complaint.

WHEREFORE, the Bangor Defendants pray for a dismissal of Plaintiff's Amended Complaint and for their costs and attorneys' fees and such other and further relief as the Court deems just and appropriate.

AFFIRMATIVE DEFENSES

1. Plaintiff's Complaint fails to state a claim against each of the Bangor Defendants upon which relief may be granted.
2. Each of the Bangor Defendants is entitled to absolute immunity from suit, which bars Plaintiff's claims.
3. Each of the Bangor Defendants is entitled to qualified immunity from suit, which bars Plaintiff's claims.
4. The Bangor Defendants were at all times acting in good faith.
5. Plaintiff failed to comply with the applicable notice provisions under state law and therefore her claims are barred.
6. The negligence of the Plaintiff is equal to or greater than any fault on the part of the Defendants and therefore, bars Plaintiff's claims.
7. The acts or omissions of third persons over whom Defendant had neither control nor responsibility caused in whole or in part any damages suffered by the Plaintiff.
8. The action by Defendant was not a proximate cause of any of Plaintiff's claim for damages.
9. Plaintiff's alleged harm was caused by an intervening and superseding cause and/or by the sole negligence of other persons.

DATED at Bangor, Maine this 21st day of June, 2016.

/s/ Frederick F. Costlow, Esq.

Frederick F. Costlow, Esq.
Heidi J. Hart, Esq.
Attorneys for Bangor Defendants

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CERTIFICATE OF SERVICE

I, Frederick F. Costlow, Esq., of Richardson, Whitman, Large & Badger, attorney for the Bangor Defendants, hereby certify that on June 21, 2016, I electronically filed the foregoing *Answer and Affirmative Defenses to Plaintiff's Complaint* with the Court via the CM/ECF electronic filing system, which will send notification of such filing to all counsel of record in the above-captioned matter.

/s/ Frederick F. Costlow

Frederick F. Costlow, Esq.
Richardson, Whitman, Large & Badger